

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Sections 3650, 3651, 3652, 3653, 3654, 3655,  
3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663,  
3663.5, Pierce's Disease Control Program

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Sections 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5 (Sections 3650 through 3663.5) is to provide authority for the State to minimize the destructive impact of Pierce's disease and its vectors at the earliest possible time on the agricultural industry, by establishing a program to arrest the artificial spread of the disease and its vector, the glassy-winged sharpshooter (GWSS), *Homalodisca coagulata*, to additional areas; thereby protecting California's agricultural industry.

The factual basis for the determination by the Department that emergency adoption of Sections 3650 through 3663.5 is necessary is as follows:

The Legislature has found and declared that Pierce's disease and its vectors present a clear and present danger to the State's grape industry, other agricultural commodities and plant life, and has therefore enacted urgency legislation mandating immediate action to minimize the destructive impact of Pierce's disease and its

vectors at the earliest possible time. In addition, the Governor recognized the immediate threat posed by the glassy-winged sharpshooter (GWSS), *Homalodisca coagulata*, in requesting that the United States Department of Agriculture declare a state of emergency under federal law. The federal declaration of emergency was published in the Federal Register on July 7, 2000, with an effective date of June 23, 2000.

Effective July 25, 2000, the Department adopted regulations to establish the Pierce's Disease Control Program (Sections 3650 through 3660) as an emergency. The notice for these regulations was published on September 8, 2000 and a public hearing was held on October 26, 2000. October 26, 2000 was also the end of the public comment period. All information contained in the hearing transcript, documents submitted at the hearing, Hearing Officer's memorandum and written comments received through October 26, 2000 were taken into consideration in the development of these emergency regulations. The preparation of an Environmental Impact Report (EIR) for compliance with the California Environmental Quality Act (CEQA) was initiated. These regulations were re-filed as emergencies on November 21, 2000, March 19, 2001, and July 11, 2001.

Effective November 8, 2000, the Department adopted regulations to establish Citrus Standards for the Pierce's Disease Control Program (Section 3661 through 3663) as an emergency. The notice for these regulations was published on December 29, 2000. The comment period ended on February 12, 2001. A hearing was not requested and no comments were received. These regulations were re-filed as emergencies on March 8, 2001 and July 6, 2001.

The emergency re-filings of Sections 3650 through 3660 and Sections 3661 through 3663 were necessary to continue the regulations while the EIR was being completed for compliance with CEQA. The time necessary to complete the CEQA process was significantly longer than originally anticipated. The Department now anticipates that the CEQA compliance process will be completed within the next 120 days. Since November 2001, the Pierce's Disease Control Program has been functioning under statutory authority, conducting inspections and taking action against infested shipments under general statutory provisions for nursery stock, shipments, and rejection of pest infested shipments. It is essential that the program have available the authority of specific regulations to be most effective. The regulations will provide

authority for enforcing specific standards at both origin and destination to more effectively contain the GWSS to existing infested

areas. The GWSS infestations still present an emergency situation and present a need for adoption of regulations on an emergency basis.

The Department of Food and Agriculture previously adopted these regulations to further its implementation of a Statewide Program and Rapid Response Plan to arrest the spread of, and eradicate GWSS (where feasible), upon its detection in additional areas. Immediate adoption of these regulations and implementation of a Statewide Program and Rapid Response Plan have been actions necessary to carry out the Legislature's purpose to control Pierce's disease and to mitigate the effects of the ongoing spread of the GWSS.

In addition, because the spread of the GWSS threatens California's agricultural industry, its detection in previously non-infested counties constitutes an emergency necessitating immediate action to arrest the spread of the insect. Independent of the legislative findings and declarations that Pierce's disease and the GWSS constitute a present danger which must be immediately addressed and mitigated, specific facts and circumstances clearly also indicate that the spread of the GWSS presents a clear and imminent danger to property and therefore constitutes an emergency. The Department has been therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

Several other leafhoppers and plant feeding insects are known to vector Pierce's disease, but have not resulted in transmission of the disease at levels of serious economic significance. The GWSS is an especially strong and aggressive flier, capable of spreading Pierce's disease over larger areas than other vectors of the disease. It is also a voracious feeder that moves rapidly from one host plant to another in search of food. The pest is also prolific and lays its eggs on over a hundred different species of plants.

The GWSS is not a native insect pest in California and its introduction to this State is relatively recent. First observed in California in 1990, the GWSS has now infested Southern California and parts of Butte, Fresno,

Kern, Sacramento, Santa Clara and Tulare Counties. In August 1999, the County of Riverside declared a local emergency because of the spread of Pierce's disease and the GWSS. Recently, GWSS infestations were detected in Sacramento, Santa Clara, and Tulare Counties. These new detections have occurred in counties progressively further north. It therefore is clear that the GWSS has spread to more regions in the State and the rate of spread may be accelerating.

Besides natural migration, the GWSS is spread artificially as host plants, carriers, and nursery stock are transported into and around the State; this transportation facilitates movement of the GWSS over many miles and into previously non-infested regions. In addition to commercial crops, non-commercially produced plants including houseplants, fruit trees, ornamental plants, weeds, and native plants can host the GWSS. To address this pest spread, the first actions in mitigation are detection and containment. However, the abundant variety of host plants will make eradication of this pest less possible and the application of more pesticides over greater areas will become necessary as the GWSS becomes established in additional regions.

The GWSS vectors the bacterium *Xylella fastidiosa* that causes Pierce's disease. This microorganism frequently kills grapevines and can severely impact other crops, including citrus, almonds, peaches and nectarines. In the 1890s, Pierce's disease destroyed the grape industry in Southern California. There is no treatment known to be effective against Pierce's disease. Furthermore, although the current threat posed by the GWSS is the spread of Pierce's disease, the pest can also vector citrus variegated chlorosis disease that is not known to occur in the United States. However, if the GWSS becomes widespread and citrus variegated chlorosis disease is introduced into this State, the State's citrus industry would suffer very significant losses.

Although the Statewide Program and Rapid Response Plan implemented measures to prevent the spread of the GWSS, so far, the preventative measures may have slowed but not stopped the spread of the pest. It is not possible to reasonably predict or expect the precise location or timing of new detections or the range of newly discovered infestations. Consequently, each new detection in a previously non-infested area is both sudden and unexpected and requires immediate response, lest the spread continue.

These regulations established provisions for the Pierce's Disease Control Program including legislative intent and authority; general provisions for the control program, including work plan elements; definitions; area designation procedures; inspection of shipments and disposition of infested shipments; standards for movement and certification of bulk grapes, exemptions to those standards; standards for movement and certification of plants, including vector host plants, and exemptions to those standards; standards for movement and certification of bulk citrus, exceptions to those standards. The regulations provide more specificity regarding work plans, hosts, and industry activities than those regulations originally adopted in 2000. The emergency filing also combined all regulations for the Pierce's Disease Control Program in one regulatory action. These regulations are intended to prevent the artificial spread of the GWSS.

In order to achieve the legislative intent, it is necessary for the Pierce's Disease Control Program and the affected industries to have adequate regulatory flexibility to ensure any new scientific discoveries, or more effective vector control methods, or equivalent alternative vector control or survey methods, etc., documented by researchers or any other party may be operationally incorporated into the program to make it less regulatory burdensome or costly for an affected party to be able to comply with the regulations. To achieve this flexibility, whenever the regulation text uses the phrase "in a manner approved by the Department," the phrase is associated with a performance standard. In the Area Designation Procedures (Section 3653), Inspection of Shipments and Disposition of Infested Shipments (Section 3654) and in the standards for movement of the affected commodities (Sections 3655, 3659 and 3662) performance standards are used rather than prescriptive standards. These performance standards include phrases such as, "surveyed in a manner approved by the Department to detect vectors with negative results," "processed or treated in a manner approved by the Department to eliminate the vectors," "harvested, handled, or treated in a manner approved by the Department to eliminate vectors," etc. These performance standards help ensure that the affected parties have multiple methods for achieving compliance with the regulations and are able to use the method that best suits their particular need. These performance standards allow any method or manner to be used to achieve the standard and do not preclude use of alternatives to those that have been developed/established by the Department.

Section 3650 established that the Legislature has declared *Xylella fastidiosa* (the bacterium which causes

Pierce's disease) and its vectors present a clear and present danger to California's agricultural industry, the Department's authority to adopt regulations consistent with the legislative intent of

Sections 6045-6047 (Food and Agricultural Code), and that these regulations are intended to wholly occupy the field.

Section 3651 established the general provisions of the Pierce's Disease Control Program including specifics regarding local public entities (under statutory authority, the local public entity may be a department of the county or a regional joint powers agency under agreement, if the board of supervisors so elects) and work plans, and will provide for a hearing process if an application of the entities' work plan is appealed.

Section 3652 established the definitions for bulk citrus, bulk grapes, carriers, certification, infestation, infested area, non-infested area, Pierce's disease, plants, processed grapes, and vectors.

Section 3653 established the procedures for designating areas as infested or non-infested and provided a notification and appeal process for those designations. With the recent, frequent detections of GWSS infestations in additional areas and the reasonable expectation that this will continue, it is necessary to respond to newly detected infestations as expeditiously as possible.

Section 3654 provides for inspection of shipments of bulk citrus, bulk grapes, plants, and carriers and disposition of shipments found to be infested with live vectors.

Section 3655 established the standards for movement of bulk grapes from infested areas to non-infested areas and the activities to be conducted by growers and receivers to ensure that these standards are met. These standards were developed based on the recommendations of the Pierce's Disease Task Force, Grape Movement Subcommittee.

Section 3656 established certification procedures for bulk grapes meeting the standards set forth in Section 3655. These procedures provides that each shipment of bulk grapes from an infested area shall be

accompanied by a certificate or other document issued by the agricultural commissioner at origin affirming that the shipment meets the standards for movement.

Section 3657 established exemptions to those standards for shipments that do not present a pest spread risk. These exemptions include shipments of processed grapes and shipments originating from non-infested areas.

Section 3658 established the list of plants that shall meet the requirements of Sections 3659 and 3660. This list includes all plants that are known, to date, to be hosts of the GWSS.

Section 3659 established the standards for movement of plants from infested to non-infested areas and the activities to be conducted by nurseries to ensure that these standards are met.

Section 3660 established certification procedures for plants meeting the standards set forth in Section 3659. These procedures provides that each shipment of plants from an infested area shall be accompanied by a certificate or other document issued by the agricultural commissioner at origin affirming that the shipment meets the standards for movement.

Section 3661 established exemption to those standards for shipments that do not present a pest spread risk. These exemptions will include shipments of privately owned plants that have been maintained indoors and shipments originating from non-infested areas.

Section 3662 established the specific standards for movement of bulk citrus from infested areas to a non-infested area or an area in which an active control program is being conducted. This section also provides that if the regulation is not otherwise amended, effective October 1, 2003, the language will become less specific to provide for general performance-based standards and provide that bulk citrus shall be harvested, handled, or treated in a manner approved by the Department to eliminate all live vectors or that bulk citrus shall originate from a non-infested grove as determined by surveys, including trapping and visual, approved

by the Department to detect the presence of vectors and the citrus fruit are monitored during harvest. This provision for a language change was requested by the citrus industry to ensure that the Department reevaluates the specific provisions and to provide for elimination of the specific provisions should they have been shown to be ineffective. If the Department's evaluation provides information that the specific provisions are effective and/or

provides results that determine additional effective specific provisions exist, the Department will use this information as the basis for an amendment of the regulation prior to October 1, 2003.

Section 3663 established certification procedures for bulk citrus meeting the standards set forth in Section 3662. These procedures provides that each shipment of bulk citrus from an infested area shall be accompanied by a certificate or other document issued by the agricultural commissioner at origin affirming that the shipment meets the standards for movement.

Section 3663.5 established exemption to those standards for shipments that do not present a pest spread risk. These exemptions include shipments of processed citrus fruit, including citrus fruit that has been washed and waxed and is being moved in bulk quantities, and shipments originating from non-infested areas.

To prevent artificial spread of the GWSS vector to non-infested areas to protect California's agricultural industry from the spread of Pierce's and other diseases, it is necessary immediately to establish and enforce standards on the movement of carriers which can carry this efficient vector from the infested area. Therefore, it was necessary to adopt Sections 3650 through 3663.5 on an emergency basis.

#### Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Sections 3650 through 3663.5 do impose a mandate on the local agencies, but not on school districts. Reimbursement will be made for costs resulting from this mandate from the Pierce's Disease Management Account established by the Legislature to combat Pierce's disease and its vectors. The Legislature authorized these funds to be allocated to those local public entities that develop Pierce's disease work plans that conform to statutory standards and are approved by



the Department of Food and Agriculture. By adopting these regulations on an emergency basis, the Department will be prescribing the standards for local Pierce's Disease Control Programs and can allocate these funds to local public entities with conforming work plans.

The Department has also determined that the adopted regulations will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and will be allocated under the approved work plans, and no costs or savings in federal funding to the State. To the extent that local agencies incur costs as a result of their enforcement of and compliance with these regulations, the local agencies may recover those costs by establishing an acceptable Pierce's disease work plan that qualifies for allocation of funds appropriated by the Legislature for this purpose.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture finds that the adoption of these regulations may have an adverse economic impact on some California businesses, including the ability of California businesses to compete with businesses in other states. The economic impact on those California businesses is not expected to be significantly adverse when balanced against the protection provided to those businesses from costs or losses due to Pierce's disease or the GWSS.

The types of businesses that may be impacted are nursery stock producers, nurseries and landscapers, grape growers, and grape processors (receivers), including wineries; and citrus growers, and citrus receivers (processors and packing facilities). The regulations include performance standards, rather than prescriptive standards, for achieving compliance. This provides affected parties the greatest flexibility and with many potential options to achieve compliance.

The Department has identified approximately 168 production nurseries in the GWSS infested areas that must comply with these regulations. Costs for these nurseries include those for additional treatments and labor costs for inspections, trapping, and special handling of plants. These costs are extremely varied based on the type of plants produced at each nursery, the size of nursery, the nursery's location with regard to GWSS highly populated areas, and existing pest control programs.

The average annual estimated costs for all production nurseries located within the GWSS infested area are \$59,524.

Approximately 9,000 commercial grape growers/shippers have been identified as producing grapes for fresh market, raisins, juice, canning, and wine in California. Of these, approximately 615 are located in GWSS infested areas; therefore, the costs for compliance with these regulations are not expected to be significantly adverse. The average annual cost to a grape grower/shipper is estimated to be \$947. Approximately 896 receivers, including wineries, have been identified as processing grapes in California. It is anticipated that a small number will have additional costs resulting from these regulations and those costs should not be significant. The average annual cost to a grape receiver is estimated to be \$25.

Approximately 2,334 citrus growers/shippers have been identified as located within the GWSS infested areas and producing citrus for fresh market or processing. Many of these growers/shippers will have to treat their groves or mechanically brush the bulk citrus prior to shipping to a packing or processing facility. Additionally, some bulk citrus shipments may be rejected at destination due to live life stages of GWSS being detected and as a result, returned to the grower/shipper. The average annual combined costs for treatment, mechanical brushing and handling rejected bulk citrus shipments to an individual representative grower/shipper are estimated to be \$1,418. Additionally, receivers may have GWSS contaminated bulk citrus shipments delivered to their facility and be required to store the bulk citrus in a "sweat room" to eliminate any live life stages. The Department identified approximately 97 receivers of bulk citrus from GWSS infested areas. The average annual cost to a receiver is estimated to be \$2,216.

The value of California's grape industry is approximately fifty billion dollars. The value of California nursery products is approximately 2.7 billion dollars per year.

Based on the above information, it was determined that the adoption of Sections 3650 through 3663.5 may have an adverse economic impact on businesses, but it is not expected to be significantly adverse. For many businesses, no additional costs will be incurred.

#### Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### Information Relied Upon

The Department relied upon the following studies, reports, and documents in the adoption of Sections 3650 through 3663.5:

Estimated Annual Economic Impact of Pierce's Disease Control Program, California Department of Food and Agriculture, Permits and Regulations; November 15, 2002

Estimated Annual Pierce's Disease Control Program cost Basis, California Department of Food and Agriculture, Permits and Regulations; November 15, 2002

Facsimile transmission of November 15, 2002 to Stephen Brown from Roger Spencer, Advisory Task Force Minutes, 10 pages.

E-mail of November 15, 2002 to Stephen Brown from Roger Spencer and its attachment; "Affected Industries," Pierce's Disease Program, November 15, 2002.

E-mail of November 14, 2002 to Stephen Brown from Roger Spencer and its attachments; "Pierce's

Disease Program, Emergency Regulations, Estimated Costs to the Citrus Industry,” dated November 14, 2002; and, “Pierce’s Disease Program, Estimated Annual Costs to Industry for Bulk Grape Compliance Activities,” dated September 13, 2002.

Facsimile transmission of September 27, 2002 to Barbara Hass from Thomas E. Esser, Pest and Damage Records #P168817 (September 23, 2002) and #P167818 (September 23, 2002); California Department of Food and Agriculture, three pages.

Memo of September 25, 2002 to Barbara Hass from Robert V. Dowell, Subject: Glassy-winged Sharpshooter Host List.

November 11, 2000 Hearing Officer’s Memorandum to William J. Lyons, Jr. from Bill L. Callison.

Letter of October 31, 2000 to Barbara Hass from Lenord Craft.

All written comments received through October 26, 2000 as a result of the notice for Sections 3650-3660 published on September 8, 2000 and having October 26, 2000 as the end of the public comment period.

All hearing documents submitted to the Department during the October 26, 2000 Administrative Regulatory Hearing, Pierce’s Disease Control Program Regulations, Sections 3650-3660.

October 26, 2000 transcript of Administrative Regulatory Hearing, Pierce’s Disease Control Program Regulations, Sections 3650-3660, by Peters Shorthand Reporting Corporation.

California Senate Bill Number: SB 671, Chapter 21, effective May 19, 2000.

Federal Register Vol. 65, No. 131, Docket No.00-060-1, page 41930, July 7, 2000.

Letter of July 17, 2000 to William J. Lyons, Jr. from Dennis F. Bray.

Letter of July 17, 2000 to William (Bill) J. Lyons, Jr. from Christopher Ono.

Letter of July 14 to Bill Lyons from John A. De Luca.

Letter of July 14, 2000 to Bill Lyons from Karen Ross.

Letter of July 14, 2000 to Bill Lyons from Kevin Andrew.

Office of the Governor L99:212, “Governor Davis Signs Legislation Funding Research to Combat Wine Crop Destroying Bacteria,” October 10, 1999.

Letter of June 2, 2000 to All Agricultural Commissioners and All Other Interested Parties from Robert L. Wynn, Jr., with attachments.

Statement of William (Bill) J. Lyons, Jr., Secretary, California Department of Food and Agriculture, before the Livestock and Horticulture Subcommittee, House Agricultural Committee, Napa, California, February 22, 2000.

Value of California Nursery Products, California Department of Food and Agriculture, Nursery Program, July 24, 2000.

“Glassy-winged Sharpshooter, a Serious Threat to California Agriculture, University of California, Pierce’s Disease Research and Emergency Response Task Force, December 1999, two pages.

“An Introduction to Pierce’s Disease,” 3/24/00 at <http://www.cnr.berkeley.edu/xylella/page2.html>.

“Approximate Distribution of Pierce’s Disease in California,” CDFA, March 2000.

“*Xylella fastidiosa*,” EU Annex, pages 1153 and 1154.